

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 15-11

IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV,

— vs. —

**MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

INFORMAL DOCKET NO.: 1953(I)

KAIRAT NURGAZINOV,

— vs. —

**MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

**COMPLAINANTS' CROSS-MOTION FOR AN ORDER TO SHOW CAUSE AS TO
WHY THE COMMISSION SHOULD NOT SUSPEND ERIC JEFFREY, ESQ. FROM
PRACTICING BEFORE THE COMMISSION FOR A PERIOD OF NOT LESS THAN
SIX MONTHS AND AS TO WHY HE SHOULD NOT BE PERSONALLY REMOVED
AS COUNSEL FOR THE RESPONDENTS; AND RESPONSE TO RESPONDENTS'
MOTION FOR AN ORDER TO SHOW CAUSE WHY THE COMMISSION SHOULD
NOT REVOKE COMPLAINANTS' COUNSEL'S PRIVILEGE OF PRACTICING
BEFORE THE COMMISSION**

Pursuant to Rules 69 and 71 of the Federal Maritime Commission's (the "Commission") Rules of Practice and Procedure (46 C.F.R. 502 *et seq.*), Complainants, through their Counsel, Marcus A. Nussbaum, Esq. respectfully submit this Cross-Motion For An Order To Show Cause As To Why The Commission Should Not Suspend Eric Jeffrey, Esq. From Practicing Before The Commission For A Period Of Not Less Than Six Months and as to Why He Should Not Be Personally Removed As Counsel For The Respondents; and Response To Respondents' Order to

Show Cause Why the Commission Should Not Revoke Complainants' Counsel's Privilege of Practicing Before the Commission.

At the outset, while complainants would never disagree that it is indeed a "privilege" to practice law and litigate cases before the Federal Maritime Commission (the "Commission"), and without remotely denigrating all respect, ethical considerations, and adherence to the Code of Professional Responsibility associated with practicing before the Commission, least Mr. Jeffrey obfuscate the legal and administrative requirements for practicing before the Commission, as even Mr. Jeffrey is surely well aware, such requirements consist of being admitted to the bar in any one of the fifty states of this country, and bringing forth claims that meet the requirements and conditions precedent regarding personal and subject matter jurisdiction.

Complainants' counsel did not attend law school and become a member of the bar for the purpose of taking away another attorney's livelihood. As an Officer of the Court, however, complainants' counsel has been compelled to cast aside personal beliefs in favor of 'doing what is right'. Having suffered to endure conduct and behavior on the part of respondents' counsel, Eric Jeffrey which has progressed from mere insufferable pomposity and gross uncivility to perjury, fraud, and a demonstration of overt mental and emotional instability, complainants' counsel is further compelled to engage in the distasteful process of seeking an Order from the Presiding Officer suspending Mr. Jeffrey from practicing before the Federal Maritime Commission (the "Commission") for a period of not less than six (6) months or such time period as the Commission and/or the Presiding Officer may deem just and appropriate, and that he personally be removed as counsel for the respondents, so that Mr. Jeffrey may be given to understand the seriousness of the false and fraudulent allegations that he has made against complainants' counsel herein, and the utter frivolity of his instant motion.

Complainants' counsel will not address Mr. Jeffrey's "beliefs" that a ruling on his motion constitutes a dismissal of complainants' claims herein, and that such a ruling would constitute a

waiver of complainants' right to appeal thereon, other than to state that the foregoing is a continuing example of "the law according to Jeffrey". Complainants' counsel does note the overt indicia of Mr. Jeffrey's undeniable consciousness of guilt by his attempting to preemptively address what is described as "repeating prior falsehoods" and anticipating (rightfully) the interposing of complainants' instant cross-motion.

It is difficult, if not impossible, to characterize the breadth and scope of Mr. Jeffrey's outsized ego as demonstrated by the didactic contexts within which he purports to ply his venom. Similarly incalculable, is Mr. Jeffrey's megalomaniacal 'world view' of himself as the guardian of the legal profession, charged with a duty to initiate disciplinary investigation. Succinctly stated, while Mr. Jeffrey sees himself as Hercule Poirot, his instant ill-founded motion is more redolent of Inspector Clouseau.

Certainly, ten pages are *grossly* inadequate to detail the patent falsity of Mr. Jeffrey's unfounded accusations against complainants' counsel, let alone to catalogue Mr. Jeffrey's own many lies and acts of deceitful practice - - nor would one-hundred pages be adequate for this purpose. Consequently, complainants' counsel will address the most egregious examples of the utter frivolity of Mr. Jeffrey's motion, as well as to expose his own grossly unprofessional and unethical conduct and behavior deserving of suspension of his privileges to practice before the Commission.

From the inception of this litigation, Mr. Jeffrey has personally conducted himself in a manner that is at best, uncivil and at worst, animalistic and unbalanced.

Complainants' counsel has had growing concerns over Mr. Jeffrey's mental competence and stability, most recently fueled by his perception of a quotation from a popular song lyric as a "threat" deserving of report to law enforcement (a further unbalanced action which Mr. Jeffrey has silently but wisely retreated from), which have now reached alarming levels based upon the preposterous application now made by Mr. Jeffrey before the Commission.

As to Mr. Jeffrey's continuing association with one Jon Werner, who Mr. Jeffrey now openly admits is functioning as a "coordinating counsel" in this matter, and who has authored more than one affidavit on behalf of Werner/Jeffrey's mutual client, Hitrinov, it is respectfully submitted that if Mr. Werner is to be allowed to continue to file submissions with the Commission under the auspices of counsel for the respondents herein, that Mr. Werner should either be compelled to appear in this matter, *pro hac vice*, or cease further unwanted interference with the adjudication thereof.

As to Mr. Jeffrey's inexplicably compulsive obsession with *pro hac vice* counsel, Mr. Katz; and as has been represented to Mr. Jeffrey on *countless* occasions, despite his delusional inability to comprehend same; *all* pleadings, motions, status reports, filings, correspondence, and indeed *all* writings and materials relating to the litigation of this matter from its inception up to and including the time of this writing have been authored and prepared *solely and exclusively* by Marcus A. Nussbaum, Esq., and *not* by Mr. Katz, who has to date played an extremely limited role in the litigation of this matter, having been retained primarily for purposes of depositions and trial hereon.

BRIEF STATEMENT

Having obviously lost confidence in respondents' pending Motion for Judgment on the Pleadings based upon the responses of complainants' counsel, Jeffrey/Werner then shifted ground by fraudulently authoring a series of submissions under the name of non-party Kapustin in hopes of succeeding where his earlier motion became doomed for failure, in a continuing desperate attempt to at any and all costs avoid litigation of this matter on its merits. Out of an obvious fear that this strategy was also destined for failure, Mr. Jeffrey has now resorted to what can only be characterized as an ultimate act of desperation, to wit, a feckless attempt to have the case dismissed by a specious application completely lacking in substance, and entirely belied by the facts, and prior submissions presently before the Presiding Officer. Stated otherwise, having realized his

inability to either having the case dismissed on the pleadings, and accompanying failure to have complainants' counsel "disqualified" through having authored fraudulent submissions under the name of non-party, Kapustin, Jeffrey/Werner now seeks the only other avenue available to respondents to avoid losing an otherwise indefensible case, to wit, the outrageous, preposterous, absurd, ridiculous, and totally unsupported application now made before the Presiding Officer and the Commission, and in doing so, totally abusing the litigation process, and wholly abdicating their responsibilities as an Officers of the Court.

To the extent that said application is completely lacking in substance and support, and is made solely in a "bad faith" and last-ditch effort to avoid litigating this case on its merits and to "punish" complainants' counsel for non-existent acts and omissions, it is respectfully submitted that the filing of such an abhorrent and legally bereft motion merits, indeed cries out, that Mr. Jeffrey be suspended from practicing before the Commission for a period of not less than six (6) months or such a time period as the Presiding Officer or the Commission may deem just and proper under the circumstances, and that he be personally removed as counsel for the respondents.

ARGUMENT

As to Mr. Jeffrey's purported "arguments" (if they can fairly be characterized as such) complainants' counsel will address same to the extent a response is merited or required.

A prime example of the utter paucity of Mr. Jeffrey's "arguments" is that within which he has seriously suggested that the Commission "revoke complainants' counsel's privilege of practicing before the Commission" upon ground of alleged misrepresentations concerning personal time taken by complainants' counsel, and (unbelievably) matters concerning an auto response for complainants' counsel's office email. It is difficult if not impossible to comprehend how, and in what way, Mr. Jeffrey (or any mentally stable or competent attorney) could or would seriously argue in favor of revoking a fellow practitioner's ability to ply their trade upon such

infantile and childish nonsense. To the extent that Mr. Jeffrey has done so, however, the following is proffered in response thereto.

As the Presiding Officer may or may not be aware, complainants' counsel is a sole practitioner. Further, while complainants' counsel maintains office space, inclusive of an email address appurtenant thereto, complainants' counsel often works out of his residence. Accordingly, complainants' counsel utilizes an "auto-response" for 'after hour' emails (in which Mr. Jeffrey specializes) in order to advise that emails sent during said time period may not be received or read pending the next business day. As would be obvious to any normal thinking person whose mind is not cluttered with a bitter, hate-filled, vindictive and personal vendetta, or other mental imbalance, the mere fact that said email is on auto-response precludes *neither* the reading of said email, *nor* a response to same. It is again difficult if not impossible to comprehend how, or in what way the foregoing could *remotely* constitute a basis for the revoking of complainants' counsel's ability to practice before the Commission as ridiculously propounded by Mr. Jeffrey.

As to Mr. Jeffrey's fallacious representations concerning personal time off taken by complainants' counsel, words do not exist to describe the incredible irony of such accusations in light of his own disgusting practice of having used the death of his father as a pretext for garnering additional time (albeit, unjustly), which the Presiding Officer recognized might indeed constitute an issue to be addressed before some other tribunal upon disposition of the instant matter. That said, and though Mr. Jeffrey is the last person on earth deserving of *any* explanation of personal time off taken by complainants' counsel, least Mr. Jeffrey's lies be mistaken for truth complainants' counsel responds as follows:

Complainants' counsel scheduled personal time off from July 13, 2016 through August 11, 2016. Though manifestly none of Mr. Jeffrey's business, the purpose of said time off encompassed a trip to Israel to attend to family matters and additional days within which complainants' counsel's office was closed for business. The fact that complainants' counsel undertook to conduct a

deposition on an unrelated matter during said time off is not only manifestly none of Mr. Jeffrey's business and *of no consequence whatsoever* with respect to litigation of the instant case but again constitutes *no ground whatsoever* for the draconian relief absurdly sought by Mr. Jeffrey upon such ridiculous grounds as those set forth above, which are now paraded before the Presiding Officer to detract and distract from Mr. Jeffrey's own grossly unethical methods of practice.

As the Presiding Officer is now aware from prior submissions, Mr. Jeffrey has fraudulently authored multiple submissions from non-party, Kapustin, and has further supported said submissions in additional writings to the Commission and the Presiding Officer. As the Presiding Officer is further aware, Kapustin is a proven liar, fraud, cheat, and "master criminal" as defined by the Honorable Judge Noel Hillman in language emanating from a holding previously docketed with the Commission. Indeed, and in the veritable same breadth of aligning himself with and supporting Kapustin, Mr. Jeffrey simultaneously acknowledges that Kapustin is a liar, is disreputable, and is not to be believed, the incongruity of which further establishes the complete lack of merit to Mr. Jeffrey's outrageous application.

With respect to Mr. Jeffrey's bombastic pronouncement that complainants' counsel has allegedly "...rel[ied] upon invoices they know to be falsified...", once again, complainants are *gobsmacked* by the indescribable irony of Jeffrey/Werner accusing *anyone* of relying on falsified documents, in light of Jeffrey/Werner's proffer of an affidavit purporting to be that of their mutual client, Hitrinov containing an obviously forged signature, a copy of which is annexed hereto as Appendix "A". Notably, the conclusions as to said signature being an obvious forgery are drawn by a forensics expert (see Appendix "B"), as opposed to the didactic pronouncements of an unbalanced attorney or his cohort. Also noteworthy, is the fact that upon having been exposed for submitting a fraudulent document containing an obviously forged signature of Hitrinov, Jeffrey/Werner attempted to remedy the situation by providing yet *another* document purporting to contain the signature of Hitrinov, which was not only undated, but misrepresented an alleged

notarization thereof by an individual who failed to enter appropriate identification and certification data concerning said fraudulent notarization (see Appendix “C”). Conspicuously absent and inexplicably missing from Mr. Jeffrey’s pronouncements is *any* affidavit from respondent, Hitrinov or any other representative of respondent Empire United Lines Co. Inc. (“EUL”), attesting as to which of the documents is the invoice “actually sent” to Kapustin. Needless to say, such documents cannot be ‘self-verified’ through the attorney’s affirmation of appearing counsel, let alone representations of a non-appearing counsel, Werner. Accordingly, this would appear to be more of a case of *falsus in uno* rather than *res ipsa loquitur*.

Alternatively stated, there is indeed a second set of “heavily doctored” invoices at issue with respect to each of the four subject automobiles, however, that particular fraud, along with *all* other fraudulent conduct and behavior in this case, rests squarely with Jeffrey/Werner and their mutual client, Hitrinov. Needless to say, Mr. Jeffrey’s didactic and unsupported allegations cannot possibly serve as any reasonable basis for the Presiding Officer or the Commission granting respondents motion that an Order to Show Cause issue, let alone that said order be granted.

Further, and to the extent that the “heavily doctored” versions of said documents were *created by respondents*, there is “no blame to shift” other than to let such blame repose where it fairly belongs, to wit: upon Jeffrey/Werner and their mutual client, Hitrinov.

With regard to Mr. Jeffrey’s unintelligible and non-sequitur reference to “native originals” of the documents at issue, no comment on same is merited or required other than to note Mr. Jeffrey’s completely convoluted logic in arriving at the undeniably false constructs contained in his motion.

Of considerable entertainment value, amidst the abhorrent invective spewed forth by Mr. Jeffrey, is the entirely laughable concept of non-party Kapustin making *any* statement “under oath” which is, to say the least, legally and morally bankrupt, and is an understatement of galactic proportions by Mr. Jeffrey’s concession of Kapustin as “...not an entirely reliable witness”.

Consequently, there exists neither falsity nor fabrication with respect to the documents proffered by complainants, in that if there is *any* false or fabricated documents which have been produced in this case, they have been produced *solely and exclusively* by Jeffrey/Werner and their mutual client, Hitrinov.

In yet a further example of ultimate irony, Mr. Jeffrey has attempted to castigate complainants' counsel for having proffered an affidavit of Maria Temkin, Esq. who attested to her own experience with Kapustin as a liar, cheat and fraud. Such irony is only heightened by Mr. Jeffrey engaging in an epic demonstration of the psychological phenomenon known as "projection", wherein Mr. Jeffrey accuses, and has accused complainants' counsel of numerous wrongdoings, when in fact it is Mr. Jeffrey who has violated the codes of professional conduct by turning himself into a veritable "garbage man", poring through the refuse of each and every attorney who has been an adversary in unrelated matters involving complainants' counsel.

It is respectfully submitted that despite considerable effort to "throw enough 'mud' on the wall" in desperate hopes that some of it will stick, such picayune and pissant hyperbole at once reveals the utter frivolity and sheer desperation of Mr. Jeffrey's instant motion, which gives new meaning to the axiom of *de minimus non curat lex*.

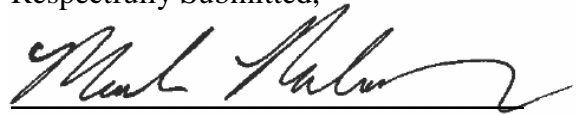
Most disingenuous, is Mr. Jeffrey's repeated portrayal of himself as the "keeper of the Rules", akin to Moses descending from Mount Sinai with the stone tablets, which is completely belied by Mr. Jeffrey's constant and repeated violations of the Rules which he so fervently defends, by taking uncountable "bites at the apple" in the form of innumerable so-called "status reports" as pretexts for further failed argument on motions previously made, and additional filings *all filed without leave of the Presiding Officer*, reducing Mr. Jeffrey to *no one* to lecture *anyone* on the Rules of the Commission.

WHEREFORE, and based upon the foregoing, it is respectfully submitted that the Presiding Officer should now deny the frivolous, baseless, retributive, and punitive motion of

respondents in its entirety, with prejudice; decline to issue the Order to Show Cause requested; and grant complainants' Cross-Motion For An Order To Show Cause As To Why The Commission Should Not Suspend Eric Jeffrey, Esq. From Practicing Before The Commission For A Period Of Not Less Than Six Months and that He Personally Be Removed As Counsel For The Respondents, together with such other and further relief as the Presiding Officer may deem just and proper under the circumstances.

Dated: September 8, 2016
Brooklyn, New York

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Marcus A. Nussbaum", written over a horizontal line.

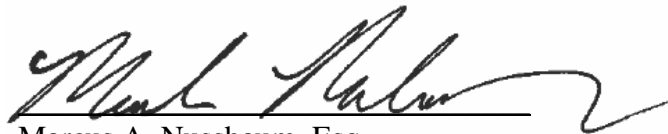
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the **COMPLAINANTS' CROSS-MOTION FOR AN ORDER TO SHOW CAUSE AS TO WHY THE COMMISSION SHOULD NOT SUSPEND ERIC JEFFREY, ESQ. FROM PRACTICING BEFORE THE COMMISSION FOR A PERIOD OF NOT LESS THAN SIX MONTHS AND AS TO WHY HE SHOULD NOT BE PERSONALLY REMOVED AS COUNSEL FOR THE RESPONDENTS; AND RESPONSE TO RESPONDENTS' MOTION FOR AN ORDER TO SHOW CAUSE WHY THE COMMISSION SHOULD NOT REVOKE COMPLAINANTS' COUNSEL'S PRIVILEGE OF PRACTICING BEFORE THE COMMISSION** and APPENDIX upon Respondents' Counsel at the following address:

Nixon Peabody LLP
Attn: Eric C. Jeffrey, Esq.
799 9th Street NW, Suite 500
Washington, DC 20001-4501

by first class mail, postage prepaid, and by email (ejeffrey@nixonpeabody.com).

A handwritten signature in black ink, appearing to read "Marcus A. Nussbaum", is written over a horizontal line.

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Dated: September 8, 2016 in Brooklyn, New York.